

AMENDED IN SENATE MAY 20, 2009  
AMENDED IN SENATE APRIL 23, 2009  
AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 407**

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**Introduced by Senator Padilla**

February 26, 2009

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An act to add Article 1.4 (commencing with Section 1101.1) to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, relating to water conservation.

LEGISLATIVE COUNSEL'S DIGEST

SB 407, as amended, Padilla. Property transfers: plumbing fixtures replacement.

Existing law authorizes public entities that supply water, by the adoption of an ordinance or resolution pursuant to specified procedures, to adopt and enforce a water conservation program. Existing law requires certain disclosures to be made upon the transfer of real estate. Existing law requires that all water closets or urinals sold or installed in the state use no more than an average of 1.6 gallons or one gallon per flush, respectively.

This bill would require that, on and after January 1, 2014, all plumbing fixtures in any residential or commercial real property that are not water-conserving plumbing fixtures be replaced prior to the time of sale or transfer by the property owner with water-conserving plumbing fixtures, as defined, with specified exceptions. *The bill would include within these exceptions, among others, a sale or a transfer pursuant to nonjudicial foreclosure and a sale or transfer in which the requirements of this article would impose a significant, financial hardship on the*

*seller or transferor.* The bill would require that compliance with this requirement be included as a condition of escrow for any sale or transfer. The bill would require a seller or transferor of real property to certify to the prospective purchaser or transferee, in writing, that the requirement has been satisfied. ~~The bill would provide that the certification is a material term of any sale or transfer.~~ The bill would except from its provisions registered historical sites, certain transfers, including those between specified family members, and transfers in which a licensed plumber certifies that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible. The bill would require a real estate agent to disclose the requirements described above and would provide that an agent has no other liability in this connection. The bill would also make a statement of findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Article 1.4 (commencing with Section 1101.1)
- 2 is added to Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil
- 3 Code, to read:
- 4
- 5 Article 1.4. Water Use Efficiency Improvements Upon Transfer
- 6
- 7 1101.1. The Legislature finds and declares all of the following:
- 8 (a) Adequate water supply reliability for all uses is essential to
- 9 the future economic and environmental health of California.
- 10 (b) Environmentally sound strategies to meet future water supply
- 11 and wastewater treatment needs are key to protecting and restoring
- 12 aquatic resources in California.
- 13 (c) There is a pressing need to address water supply reliability
- 14 issues raised by growing urban areas.
- 15 (d) Economic analysis by urban water agencies has identified
- 16 urban water conservation as a cost-effective approach to addressing
- 17 water supply needs.
- 18 (e) There are many water conservation practices that produce
- 19 significant energy and other resource savings that should be
- 20 encouraged as a matter of state policy.

(f) Since the 1991 signing of the “Memorandum of Understanding Regarding Urban Water Conservation in California,” many urban water and wastewater treatment agencies have gained valuable experience that can be applied to produce significant statewide savings of water, energy, and associated infrastructure costs. This experience indicates a need to regularly revise and update water conservation methodologies and practices.

(g) To address these concerns, it is the intent of the Legislature to require property owners to retrofit outdated, high water use plumbing fixtures upon resale, and that sellers or transferors be required to disclose these upgrades upon resale.

(h) It is further the intent of the Legislature that retail water suppliers are encouraged to provide incentives, financing mechanisms, and funding to assist property owners with these retrofit obligations.

1101.2. (a) On and after January 1, 2014, all noncompliant plumbing fixtures in any residential or commercial real property shall be replaced prior to the time of sale or transfer by the property owner with water-conserving plumbing fixtures.

(b) Compliance with this section shall be included as a condition of escrow for any sale or transfer.

(c) A seller or transferor of real property shall certify to the prospective purchaser or transferee, in writing, that the requirements of this section have been satisfied. This certification ~~is a material term of any sale or transfer and~~ may be included in other transactional documents.

1101.3. For the purposes of this article:

(a) “Noncompliant plumbing fixture” means any of the following:

(1) Any toilet manufactured to use more than 1.6 gallons of water per flush.

(2) Any urinal manufactured to use more than one gallon of water per flush.

(3) Any showerhead manufactured to have a flow capacity of more than 2.5 gallons of water per minute.

(4) Any interior faucet that emits more than 2.2 gallons of water per minute.

(b) “Water-conserving plumbing fixture” means any fixture that is in compliance with current building standards applicable to a

1 newly constructed residential or commercial real property of the  
2 same type.

3 (c) “Sale or transfer” means the sale or transfer of an entire real  
4 property estate or the fee interest in that real property estate and  
5 does not include the sale or transfer of a partial interest, including  
6 a leasehold.

7 1101.4. This article shall not apply to any of the following:

8 (a) Registered historical sites.

9 (b) Transfers that are required to be preceded by the furnishing  
10 to a prospective transferee of a copy of a public report pursuant to  
11 Section 11018.1 of the Business and Professions Code and transfers  
12 which can be made without a public report pursuant to Section  
13 11010.4 of the Business and Professions Code.

14 (c) Transfers by a fiduciary in the course of the administration  
15 of a decedent’s estate, guardianship, conservatorship, or trust.

16 (d) Transfers from one coowner to one or more other coowners,  
17 or from one or more coowners into or from a revocable trust, if  
18 the trust is for the benefit of the grantor or grantors.

19 (e) Transfers made by a trustor to fund an inter vivos trust.

20 (f) Transfers made to a spouse, to a registered domestic partner  
21 as defined in Section 297 of the Family Code, or to a person or  
22 persons in the lineal line of consanguinity of one or more of the  
23 transferors.

24 (g) Transfers between spouses or registered domestic partners  
25 resulting from a decree of dissolution of marriage or domestic  
26 partnership, or a decree of legal separation or from a property  
27 settlement agreement incidental to a decree.

28 (h) Transfers in which a licensed plumber certifies that, due to  
29 the age or configuration of the property or its plumbing, installation  
30 of water-conserving plumbing fixtures is not technically feasible.

31 (i) *A sale or transfer in which the requirements of this article*  
32 *would impose a significant, financial hardship on the seller or*  
33 *transferor, and the seller or transferor has informed the prospective*  
34 *purchaser or transferee that this article does not apply due to that*  
35 *financial hardship.*

36 (j) *A sale or transfer of real property pursuant to a nonjudicial*  
37 *foreclosure governed by Article 1 (commencing with Section 2920)*  
38 *of Chapter 2 of Title 14 of Part 4.*

1     (k) *A sale or transfer in which the beneficiary agrees to release*  
2     *its lien on a property in return for payment of an amount less than*  
3     *the secured obligation.*

4     (l) *A sale or transfer of real property for which a notice of*  
5     *default, filed pursuant to Section 2924, is pending.*

6     1101.5. (a) Any real estate agent, real estate broker, or real  
7     estate salesperson, whether representing a transferor or transferee,  
8     or both, involved in the transfer of title to property subject to this  
9     chapter, shall give written notice to the transferee and transferor  
10    of the requirements of this article prior to the transfer of title to  
11    the property.

12   (b) The duty described in subdivision (a) is the only  
13   responsibility the real estate agent, real estate broker, or real estate  
14   salesperson has with regard to this article and the real estate agent,  
15   real estate broker, or real estate salesperson shall have no liability  
16   for any transferor's failure to comply with any other provision of  
17   this article.

18   ~~(e) Once a transferring property owner has received notice of~~  
19   ~~the requirements of this article, he or she shall be solely responsible~~  
20   ~~for compliance with them.~~

21   (c) *Nothing in this section shall be construed to alter any*  
22   *existing duty of the transferring property owner, real estate agent,*  
23   *real estate broker, or real estate salesperson under any other*  
24   *provision of law.*

25   1101.6. This article does not preempt a city, county, or city  
26   and county from adopting or enforcing any retrofit requirements  
27   relating to noncompliant plumbing fixtures that result in an  
28   equivalent or greater amount of water savings than those provided  
29   for in this article.